IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Regular Second Appeal No. 5024 of 2003

Date of decision: August 24, 2006

Punjab State Electricity Board through its Secretary, Patiala

--- Appellant

Versus

Amritsar Ice Factory and Cold Storage, Hide Market, A Partnership concern through Smt. M.R. Bagga --- Respondent

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CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr. Ajai Nara, Advocate for the appellant.

Mr. B.R. Mahajan, Advocate for the respondent.

JUDGMENT

This is defendant's second appeal against whom a decree for permanent injunction has been passed by both the courts below.

Briefly, the facts of the case are that the plaintiff filed a suit for permanent injunction stating that the defendant had raised illegal demand against it on the basis of average by charging for 141950 units for the period of August 1993 to September 1993 though the payment for the said period had also been made. It was pleaded that there was no defect in the meter nor was any defect pointed out by the officials of the defendant-Board and, therefore, the plaintiff could not be asked to pay the illegal amount without affording reasonable opportunity. The defendant contested the suit. It was stated that meter of the plaintiff was removed on 19.8.1993 for periodical checking purposes and was re-installed on 9.9.1993 and as such for the period 19.8.1993 to 9.9.1993, the direct electric supply was made to the connection of the plaintiff which is an industrial connection being used for factory and cold storage. In these circumstances, it was assessed that had

the meter been in operation during the aforesaid period from 19.8.1993 to 9.9.1993, it would have consumed 141950 units of electricity on average basis.

After appreciating evidence, the trial court decreed the suit and restrained the defendant from disconnecting the electric connection installed at the premises of the plaintiff bearing account No. 7-8 IL on the basis of the impugned bill except in due course of law. Appeal carried by the defendant was dismissed.

I have heard learned counsel for the parties and gone through the record. Counsel for the appellants vehemently submitted that the findings recorded by the courts below are wrong and legally unsustainable. On the other hand, learned counsel appearing on behalf of the respondent-plaintiff supported the findings returned by the trial court as affirmed by the first appellate court. The trial court in para 13 of its judgment returned a finding as under:-

> "I do not find myself convinced with the contentions and submissions put forward on behalf of the defendants in view of the evidence adduced, facts and circumstances of the case. First of all, the defendants were under obligation to point out or show provision under which they could resort to give direct supply to the connection of the plaintiff during their alleged periodical checking of the industrial meter. But they have failed in showing and pointing out any such rule or provision. As such I am of the view that the very action of the defendants in giving the alleged direct supply was wrong at the face of it and was not warranted by any provision or rule. No contract or agreement regarding supply of direct supply has also been asserted or produced under which direct supply to the plaintiff was resorted to as alleged. Rather on the other hand, the plaintiff has been able to prove the fact that he has been making payment for electricity consumed regularly as all the bills pertaining to the period from 7/93 to 10/93 have been produced on record along with their receipts. Accordingly in view of the documentary evidence brought on record, it is found that there arose no occasion for the defendant to charge the plaintiff for the period on average basis for which he has already made payments for electricity consumed by him. No document at all has been produced or brought forward on

record by the defendants that could even slightly show that there was consent of the plaintiff for giving him direct supply to his industrial connection or it was at his request direct supply was resorted to his connection. So much so DW-1 Shri C.L. Verma, SDO clearly admitted during his cross-examination that there is no rule for giving direct supply to the consumer without installation of the meter. Besides admittedly no opportunity of hearing has also been afforded to the plaintiff before raising the impugned demand as the defendants are under the obligation to give show cause notice under section 24 of the Indian Electricity Act for raising excessive demand other than regular charges/bill. As such in view of the above discussion, I find that there is no basis for raising impugned demand from the plaintiff."

It was primarily on this basis the suit was decreed. These findings were affirmed by the first appellate court in the appeal preferred by the defendant. The findings recorded by both the courts below are concurrent findings of fact based on appreciation of evidence oral as well as documentary and do not call for interference by this Court in second appeal. No illegality or perversity could be pointed out by the learned counsel for the appellant in the said findings. No question of law, much less a substantial question of law arises in this appeal for the consideration of this Court. The appeal is consequently dismissed

(AJAY KUMAR MITTAL)
JUDGE

August 24, 2006
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